

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PAULA ENCARNACION,)
)
Plaintiff,)
)
v.) Civil Action No. 04 12021 RCL
)
)
UNITED STATES OF AMERICA,)
)
Defendant.)

**DEFENDANT'S UNOPPOSED MOTION TO DISMISS FOR FAILURE TO
COMPLY WITH THE COURT'S OCTOBER 19, 2005, ORDER DIRECTING THE
PLAINTIFF TO RESPOND TO THE DEFENDANT'S DISCOVERY REQUESTS**

The United States moves, pursuant to Fed. R. Civ. P. 37, for an order of dismissal in this matter.

In support of the motion the United States states:

1. Interrogatories and Requests for Production of Documents were served upon the Plaintiff on or about May 10, 2005. See Exhibits 1 and 2.
2. On June 10, 2005, the United States contacted Plaintiff's counsel to inquire regarding the status of the discovery responses. See Exhibit 3.
3. Having received no response, the United States contacted Plaintiff's counsel on July 14, 2005, and July 21, 2005, inquiring as to the status of the discovery responses. See Exhibits 4 and 5.

4. On or about July 26, 2005, the United States agreed to extend the time to file such responses through August 26, 2005. See Exhibit 6.
5. On September 12, 2005, I attempted to contact Plaintiff's counsel by letter. See Exhibit 7.
6. On September 19, 2005, the United States moved for an order to compel the Plaintiff to respond to its discovery requests and to extend the discovery deadlines accordingly.
7. On October 19, 2005, this Court allowed the United States' motion to compel.
8. As of this date, November 21, 2005, no discovery responses have been provided to the United States.
9. Counsel for the United States has been informed by Plaintiff's counsel that he is unable to locate his client.
10. Plaintiff's counsel will not be filing an opposition to this motion.

Wherefore, the United States requests that this Court order that the Plaintiff's claim be dismissed for failure to comply with this Court's October 19, 2005, Order, directing that discovery responses be provided.

Respectfully submitted,

MICHAEL J. SULLIVAN
UNITED STATES ATTORNEY

By: /s/ Mark J. Grady
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Certificate of Compliance with LR 7.1

On June 10, 2005, July 14, 2005, July 21, 2005, July 26, 2005, September 12, 2005, and on November 18, 2005, I certify that I contacted Plaintiff's counsel attempting to resolve the issues raised by way of this motion.

/s/ Mark J. Grady
Mark J. Grady
Assistant United States Attorney

Certificate of Compliance with Rule 37

On June 10, 2005, July 14, 2005, July 21, 2005, July 26, 2005, September 12, 2005, and November 18, 2005, I certify that I contacted Plaintiff's counsel attempting to resolve the issues raised by way of this motion. On July 26, 2005, I attempted to resolve this dispute by granting an extension through August 26, 2005, to provide responses. Having received no discovery responses, on September 12, 2005, I attempted to further resolve the matter by letter on September 12, 2005, but have received no response. On November 18, 2005, I forwarded the above motion to the Plaintiff seeking assent to the dismissal. Counsel indicated by e-mail that the motion would not be opposed.

/s/ Mark J. Grady
Mark J. Grady
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed this 18th day of November 2005, to:

Andrew Barrett
McCarthy, Barrett & Norton, P.C.
21 McGrath Highway, Unit 301
Quincy, MA 02169

/s/ Mark J. Grady
Assistant United States Attorney